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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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The American Federation of Labor and Congress of Industrial Organizations, a federation of 102 national and international unions with a total membership of 14,500,000 working men and women, files this brief *amicus curiae* in support of the position of the respondents, with the consent of the parties as provided for in the Rules of this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

The discussion that follows is directed to petitioners' request that the Court "reconsider its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976)." Pet. Br. i, 31-43.

The felt necessity to resort to a request for the overruling of *Buffalo Forge* is, of course, a tacit admission against interest by petitioners as to the soundness of their primary argument that the decision below is wrong under the law as it stands. And in the normal course, we would not dignify such a desperate gambit with a response. But the central issue here—as it was in *Buffalo Forge* and in *Boys Markets* v. *Clerks Union*, 398 U.S. 235—concerns the scope of the Norris-LaGuardia Act and of the fereral courts' authority to enjoin strikes. The use and abuse of the labor injunction has been a dominant force in the evolution of the national labor policy during this century. Norris-LaGuardia's enactment evidenced "a clear disapproval of [the] free wheeling judicial exercises" that produced those injunctions. *Railroad Trainmen* v. *Terminal Co.*, 394 U.S. 369, 382-383. Thus, without regard to their substance, attempts, such as petitioner's here, to narrow Norris-LaGuardia and to multiply the occasions for judicial evaluation of the legality of strikes in progress, by the very nature of the subject matter, are a matter of consequence. In what may well be an excess of caution, in the argument that follows, we therefore return to first principles to show that *Buffalo Forge* was correctly decided and that this is an area in which adherence to thoroughly considered precedent is particularly warranted.

ARGUMENT

A. *Buffalo Forge* settled beyond question three propositions regarding the interplay between § 4 of Norris-LaGuardia (which bans injunctions prohibiting employees "in concert from * * * [l]eaving or refusing to perform any work"), and §§ 203(d) & 301 of the Labor Management Relations Act of 1947 (which state the policy in favor of "[f]inal adjustment of * * * grievance disputes * * * arising over * * * the application or interpretation of a collective bargaining agreement * * * by a method agreed on by the parties" and make collec-

tive agreements, including provisions requiring the parties to employ such methods, enforceable in court).

The first proposition draws a narrow and precise lesson from what Congress said and did in adopting the LMRA:

> In the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective-bargaining agreements. See *Sinclair Refining Co.* v. *Atkinson*, *supra*, at 205-208, and 216-224 (dissenting opinion). The allegation of the complaint that the Union was breaching its obligation not to strike did not in itself warrant an injunction. As was stated in the *Sinclair* dissent embraced in *Boys Markets*:
>
> > "[T]here is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail." *Sinclair Refining Co.* v. *Atkinson*, *supra*, at 225. [428 U.S. at 409.]

The *Buffalo Forge* dissent agreed:

> One week after the decision in *Sinclair*, the Court decided *Teamsters* v. *Yellow Transit*, 370 U.S. 711, by *per curiam* order citing only *Sinclair*. The dissenters in *Sinclair*, whose position was substantially adopted in *Boys Markets*, concurred in *Yellow Transit* because "the collective bargaining agreement involved in this case does not bind either party to arbitrate any dispute." 370 U.S., at 711-712. In this case, as in those cases, it does not follow from the availability of an injunction when the agreement contains a mandatory arbitration clause that one may issue when it does not. See n. 20, *infra*. [428 U.S. at 415, n. 4.]

And in n. 20, Mr. Justice Stevens added:

> It is not necessary to hold that an injunction may issue if the scope of the no-strike clause is not a clearly arbitrable issue. If the agreement contains no arbitration clause whatsoever, enforcement of the no-strike clause would not promote arbitration by encouraging employers to agree to an arbitration clause in exchange for a no-strike clause. Furthermore, even if the agreement contains an arbitration clause, but the clause does not clearly extend to the question whether a strike violates the agreement, then the parties' commitment to enforcement of the no-strike clause through enforcement of the arbitrator's final decision also remains unclear. [428 U.S. at 426-427, n. 20.]

Thus, from *Yellow Transit* through *Buffalo Forge* the Court has been unanimous in acknowledging that the national labor policy disapproves injunctions for alleged breaches of no-strike commitments where "the scope of the no-strike clause is not a clearly arbitrable issue."

Second, the *Buffalo Forge* Court was unanimous in recognizing that in situations such as that presented in *Boys Markets* injunctive relief against a breach-of-contract strike *is* available. The majority there stated:

> In *Boys Markets*, the union demanded that supervisory employees cease performing tasks claimed by the union to be union work. The union struck when the demand was rejected. The dispute was of the kind subject to the grievance and arbitration clauses contained in the collective-bargaining contract. * * * The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent was it held necessary to accommodate § 4 of the Norris-LaGuardia Act to § 301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. Striking over

> an arbitrable dispute would interfere with and frustrate the arbitral processes by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery. Even in the absence of an express no-strike clause, an undertaking not to strike would be implied where the strike was over an otherwise arbitrable dispute. *Gateway Coal Co.* v. *Mine Workers, supra; Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95 (1962). Otherwise, the employer would be deprived of his bargain and the policy of the labor statutes to implement private resolution of disputes in a manner agreed upon would seriously suffer [428 U.S. at 406-407. See also *id.* at 415-424, 431 (Stevens, J., dissenting).]

Third, the *Buffalo Forge* Court was also unanimous concerning the proposition that an arbitrator's award declaring a strike to be in breach of contract may be specifically enforced:

> Whether the sympathy strike the Union called violated the no-strike clause, and the appropriate remedies if it did, are subject to the agreed-upon dispute-settlement procedures of the contracts and are ultimately issues for the arbitrator. *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574 (1960); *Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593 (1960). The employer thus was entitled to invoke the arbitral process to determine the legality of the sympathy strike and to obtain a court order requiring the Union to arbitrate if the Union refused to do so. *Gateway Coal Co.* v. *Mine Workers*, 414 U.S. 368 (1974). Furthermore, were the issue arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases would perimt an injunction to enforce the arbitral decision. *Steelworkers* v. *Enterprise Corp., supra.* [428 U.S. at 405. See also *id.* at 424-426, 431 (Stevens, J., dissenting).]

Thus, the only area of disagreement in *Buffalo Forge* concerned the situation in which the sole arbitrable dis-

pute is whether a work stoppage is in breach of contract; *viz.*, where, in contrast to *Boys Markets* the union is not challenging through a strike an employer action or order on a subject governed by the collective agreement and subject to settlement through arbitration. The *Buffalo Forge* majority held that no such injunctions may issue (see 428 U.S. at 410-413), while the dissent in that case concluded that injunctions may issue subject to the following conditions:

> [N]o injunction or temporary restraining order should issue without first giving the union an adequate opportunity to present evidence and argument, particularly upon the proper interpretation of the collective-bargaining agreement; the judge should not issue an injunction without convincing evidence that the strike is clearly within the no-strike clause. Furthermore, to protect the efficacy of arbitration, any such injunction should require the parties to submit the issue immediately to the contractual grievance procedure, and if the union so requests, at the last stage and upon an expedited schedule that assures a decision by the arbitrator as soon as practicable. [428 U.S. at 431; footnote omitted.]

With all deference to the reasoning of the dissent, the legislative materials cannot be bent to that shape without breaking.

The *Boys Markets* rule, we believe, is best understood as the synthesis of earlier rulings in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 and in *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95. In *Lincoln Mills* the Court concluded:

> The question remains whether jurisdiction to compel arbitration of grievance disputes is withdrawn by the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. Section 101. * * * Though a literal reading might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604), we see no justifica-

> tion in policy for restricting Section 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act. * * * The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act. [353 U.S. at 457-459.]

In *Lucas Flour* the Court posed the question presented as follows:

> Whether, as a matter of federal law, the strike which the union called was a violation of the collective bargaining contract is thus the ultimate issue which this case preesnts. It is argued that there could be no violation in the absence of a no-strike clause in the contract explicitly covering the subject of the dispute over whihc the strike was called. We disagree. [369 U.S. at 104-105.]

The Court then observed that:

> In a consistent course of decisions the Courts of Appeals of at least five Federal Circuits have held that a strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement. The National Labor Relations Board has reached the same conclusion. *W. L. Mead, Inc.*, 113 NLRB 1040. We approve that doctrine [369 U.S. at 105.]

And the Court concluded:

> The grievance over which the union struck was, as it concedes, one which it had expressly agreed to settle by submission to final and binding arbitration proceedings. The strike which it called was a violation of that contractual obligation. [369 U.S. at 106.]

Thus, in essence, prior to *Boys Markets* the Court had concluded that: 1) provisions to arbitrate are, despite

Norris-LaGuardia, specifically enforceable; and 2) as a matter of law the union's promise to take to arbitration its grievances over alleged employer contract violations is not simply an agreement to submit such disputes to a particular tribunal, but an undertaking also to "substitute [arbitration] for industrial strife." *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 578. While the phrasing is in terms of one promise (that the union's allegations that the employer has violated the collective agreement will be settled by arbitration), the law regards the union as having made two promises—that the dispute over the employer's contractual right to act as he did will be settled by arbitration and will *not* be settled by resort to economic force. And *Boys Markets* reads the lessons of *Lincoln Mills* and *Lucas Flour* in combination by holding that notwithstanding Norris-LaGuardia the promise to arbitrate as thus defined is enforceable in its entirety.

That reasoning does not apply where there is no underlying dispute between the parties and the only issue is whether the union has breached the obligation stated in a no-strike clause—*viz.* where the strike is not in response to an alleged employer contract violation but is traceable to a cause other than such an alleged violation.[1] As the *Buffalo Forge* Court recognized, the national labor policy has never regarded the substantive promises the parties exchange to carry with them the implication that whenever a breach is alleged that allegation requires a cessation of the disputed conduct pending settlement:

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[1] While the substance of the collective agreement here and the objective of the ILA's refusal to handle "Soviet cargo" are variously characterized (compare the positions of the petitioners, of the United States (which is not a party of the collective agreement) and of the respondents), the one point that is clear is that unlike *Boys Markets*, and like *Buffalo Forge*, the union is not attempting to substitute the use of economic force for use of the arbitration system to resolve some underlying contract grievance.

> If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract epnding the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of § 4. The court in such cases would be permitted, if the dispute was arbitrable, to hold hearings, make findings of fact, interpret the applicable provisions of the contract and issue injunctions so as to restore the status quo or to otherwise regulate the relationship of the parties pending exhaustion of the arbitration process. This would cut deeply into the policy of the Norris-LaGuardia Act and make the courts potential participants in a wide range of arbitrable disputes under the many existing and future collective-bargaining contracts, not just for the purpose of enforcing promises to arbitrate, which was the limit of *Boys Markets*, but for the purpose of preliminary dealing with the merits of the factual and legal issues that are subjects for the arbitrator and of issuing injunctions that would otherwise be forbidden by the Norris-LaGuardia Act.
>
> This is not what the parties have bargained for. * * * The parties have agreed to submit to grievance procedures and arbitrate, not to litigate. They have not contracted for a judicial preview of the facts and the law [428 U.S. at 410-411.]

Indeed, as *Lucas Flour* makes plain, the courts do not have the authority to imply a no-strike commitment beyond an undertaking not to strike over an arbitrable grievance. See 369 U.S. at 106 ("What has been said is not to suggest that a no-strike agreement is to be implied beyond the area which it has been agreed will be exclusively covered by compulsory terminal arbitration"). See also *id.* at 105, n. 14. That limitation recognizes that the union's promise to arbitrate its allegations of employer contract violations cannot be read to carry

with it a promise not to strike for other causes. Such a promise has to be separately won by the employer from the union in collective bargaining just as each of the limitations on employer action has to be won separately by the union from the employer. See, e.g. *Labor Board* v. *American Ins. Co.*, 343 U.S. 395, 404-409. And just as such substantive bargaining achievements on the union side do not carry with them a right to pre-arbitration judicial intervention so it is, and should be, on the employer side.

B. Where, as here, a party calls upon this Court to reconsider a rule of law already squarely decided, particularly one involving statutory interpretation rather than constitutional adjudication, it is, of course, not sufficient simply to demonstrate that the prior case was wrongly decided. *Edelman* v. *Jordan*, 415 U.S. 651, 671 n. 14. Rather, principles of *stare decisis* demand at a *minimum* that precedent not be disturbed unless the error in the earlier cases was "fundamental", *Donovan* v. *Dewey*, —— U.S. ——, 49 L.W. 4748, 4751 (Stevens, J., concurring), so that the earlier decision can be characterized as "unreasonable or egregiously incorrect". *Florida Department of Health, etc.* v. *Florida Nursing Home Ass'n.* —— U.S. ——, 49 L.W. 3641, 3642 (Stevens, J., concurring).[2] Further, there ought certainly to be some

[2] While *Florida Department of Health, etc.* involved interpretation of the Eleventh Amendment, *Edelman* shows that *stare decisis* principles enunciated in the context of constitutional adjudication apply with even greater force where, as here, the issue is one of statutory construction. The reason for the distinction is that where statutory interpretation is involved, an erroneous construction can be corrected by Congress, while proper development and application of constitutional principles is entrusted solely to this Court. *Edelman, supra.* In this instance, dissatisfaction by employers with *Buffalo Forge* was in fact brought to Congress' attention. At hearings in 1975 on the proposed Labor Law Reform Bill, H.R. 8410, 95th Cong. 1st Sess. (1977), before the House of Representatives Subcommittee on Labor Management Relations Of The Committee

new factor in the equation, other than a mere change in court personnel (see *Florida Department of Health, etc.*, 49 L.W. at 3642), which gives a reason to believe that the second view is not just as fallible as the first. For example, as in *Monell* v. *Dept. of Social Services*, 436 U.S. 658, more complete historical research may satisfy the Court that the position previously rejected is indubitably correct. Alternatively, as in *Boys Markets* itself, later decided cases may erode the premises of the precedent, or lead to legal anomalies not considered at the time of the previous decision. See 398 U.S. at 235, 241, 244-245 discussed at pp. 12-14, *infra*. Where, however, all the relevant considerations were fully canvassed in the earlier opinion, by both the majority and any dissenting opinions, there is scant basis for sacrificing the long-run goal of a stable and predictable legal system.

For these reasons, it would appear that recent hard-fought cases (including those decided by a divided vote) are the *least* appropriate candidates for reconsideration. In such cases, it is rational expect that no cogent argument escaped the attention of the Court. Further, unless adherence to *stare decisis* is practiced with regard to such cases, the very strength of the conviction on both sides of the question will inevitably lead to further in-

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On Education and Labor, Congress was urged to include an amendment that would have authorized district courts to enjoin strikes in violation of a no-strike clause irrespective of the nature of the dispute underlying the strike. *Proposed Amendments to the National Labor Relations Act: Hearings on H.R. 696 Before the Subcommittee On Labor Management Relations Of The House Committee On Education And Labor*, 95th Cong., 1st Sess. at 179 (1979). This proposal was obviously designed to overrule *Buffalo Forge*. However, while the Labor Law Reform Bill as passed by the House of Representatives in October 1977 did contain an amendment which would have revised *Buffalo Forge*, the bill never passed the Senate to become law. Whether or not this sequence indicates Congressional acquiescence in *Buffalo Forge*, it surely illustrates that Congress has had the *opportunity* to correct any egregious errors it perceived.

stability as the area of the law develops. In this instance, for example, the law regarding injunctions against violations of no-strike clauses has already taken one sharp turn when *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, was overruled in *Boys Markets*. However justified that reversal may have been on the basis of factors such as those discussed above, it undoubtedly encouraged the unusual request in this case that the Court reconsider a decision barely five years old. To accede to that request would create a regime of legal uncertainty particularly inappropriate where, as in labor relations, private contracts are entered into against a background of expectations concerning their legal effect. *Florida Department of Health, etc.*, 49 L.W. at 3642 (Stevens, J., concurring).

If the arguments in favor of *Buffalo Forge* continue to be deemed compelling, there is obviously no reason to reconsider that decision. But under the principles just related there is quite a separate reason *Buffalo Forge* should not be reconsidered: petitioner has entirely failed to shoulder the additional burdens imposed on one requesting that this Court consider anew a statutory question already carefully considered.

First, the developments since *Buffalo Forge* on which petitioner relies differ *toto coelo* from those on which a majority of the Court in *Boys Markets* relied in reconstructing *Sinclair*. The development which was regarded to be decisive in *Boys Markets* was the decision in *Avco Corp.* v. *Aero Lodge*, 390 U.S. 557 that § 301 suits are removable to federal court, with the consequence under *Sinclair* that injunctive relief would not be available at all, contrary to the "congressional purpose embodied in § 301(a) to *supplement*, and not to encroach upon, the pre-existing jurisdiction of the state courts." 398 U.S. at 245, emphasis in original.

Thus, the legal development that led to the overruling of *Sinclair* was a decision of this Court—*Avco*[3]—which, combined with *Sinclair* created a result which was "wholly inconsistent with * * * the Congressional purpose embodied in Section 301(a) * * *." *Id.* See also Justice Stewart's concurring opinion, 398 U.S. at 255, which explains why he changed his views after having joined the majority in *Sinclair*, pointing to *Avco*, and to his own concurring opinion therein.

The post-*Buffalo Forge* decisions on which petitioners rely have not "produced an anomalous situation" let alone one which is inconsistent with the Congressional purpose. On the contrary, those decisions, *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, and *Complete Auto Transit Co.* v. *Reis*, —— U.S. ——, 49 L.W. 4473, rest squarely on Congressional intent, as the Court's discussion of the legislative history in those cases (and in *Carbon Fuel* of the language of § 301(b) & (e) as well) unmistakably demonstrates. Those decisions produced no new development relevant here for the additional reason that they involved employer remedies for *wildcat* strikes, where the ILA's action herein was admittedly authorized by the ILA's president.

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[3] It should be noted that *Avco* itself did not provide a point for a principled limitation on the effects of *Sinclair*. The issue in *Avco* was whether a suit for breach of a collective bargaining agreement (which contained a no-strike clause and a promise to settle grievances by binding arbitration (see 390 U.S. at 558)) was removable to federal court under 28 U.S.C. § 1441. An affirmative answer was required, notwithstanding the unavailability of an injunction under *Sinclair*. Under an inescapable syllogism: 1) The agreement being subject to federal jurisdiction, and governed by federal law (under *Lincoln Mills* and its progeny), was removable under §§ 1441(a) & (b) (see 390 U.S. at 599-560); and 2): "The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." (see *id.* at 561) Thus the suit was clearly removable, and was subject to *Sinclair*, which had held that no injunction could be granted.

In short, petitioners rewrite history when they assert that "the Court has recently severely cut back on an employer's ability to obtain damages in the case of a strike in breach of a no-strike clause." Pet. Br. 39, n. 19. Those decisions did not at all "cut back" on the availability of damage awards. Rather, they left the rights of employers, unions and employees precisely where Congress deliberately placed them in 1947.[4]

The present state of the law belies also petitioners' cries of "helplessness" (Pet. Br. at 32) and "union * * * impunity" (*id.* at 33). The employers in the companion cases to this one were in no way "helpless;" they proceeded to invoke the arbitration clauses in their collective agreements and obtained within a few days an arbitrator's award ordering the end of the work stoppage that was enforced in district court. Petitioners, however, while alleging that they were "prepared to submit to arbitration" (J. App. 10), apparently never invoked their contract's grievance procedures. They nowhere explain their failure to invoke in their own behalf available and effective contractual remedies while complaining that the law is so impotent that a considered precedent should be overruled.

Moreover, we consider to be ludicrous the suggestion that employers will no longer bargain for broad no-strike clauses unless *Buffalo Forge* is overruled. See Pet. Br.

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[4] Petitioners cite as supposed evidence of disarray in the lower courts as to the meaning of *Buffalo Forge* the fact that at different stages of the controversy in *Complete Auto Transit* the District Court first denied and then granted an injunction, and that the Court of Appeals agreed. (Pet. Br. 39) We submit that those decisions reflect not "a frustrating search for the correct meaning of *Buffalo Forge*" (*id.*), but a scrupulous and entirely successful "search". It is not a sound criticism of the *Buffalo Forge* rule that differences in result "depend[] upon differences of degree. The whole law does so as soon as it is civilized." *Leroy Fibre Company* v. *Chi., Mil. & St.P. Ry.*, 232 U.S. 340, 354 (Holmes, J., concurring.)

40. Petitioners point to no evidence that this has happened in the five years since *Buffalo Forge*, and our own experience with collective bargaining is that now as before employers strive to extract from unions no-strike promises which are as broad as the employer's bargaining power can achieve. There is every reason for employers to maintain this bargaining position under the present law. It has been settled since *Labor Board* v. *Sands Mfg. Co.*, 306 U.S. 332 that an employer may lawfully discharge employees who strike in violation of a contractual no-strike obligation. And while petitioners deprecate the value of the right of discharge, employers valued that right sufficiently in 1947 that at their request Congress codified it in § 13 of the Act as a limitation of the right to strike. See H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 39, quoted in *Complete Auto Transit*, 49 L.W. at 4477. Furthermore, employers can recover damages for breach of a no-strike obligation from unions that are responsible therefor under the common law of agency, as Congress expressly provided in § 301 (b) & (e). See *Carbon Fuel Co.*, 444 U.S. at 216-217. Such damage awards may be enormous.[5] Thus, the image of "utter helplessness" which petitioners would

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[5] Where the only injury to the employer is loss of production, it is simply not true that damages are an inherently inadequate remedy, as the several very large judgments against unions for breach of no-strike agreements attest. *Iowa Beef Processors, Inc.* v. *Meat Cutters*, 597 F.2d 1138 (8th Cir.), *cert. denied*, 444 U.S. 840 (1979) ($1,756,592 damage award against international union and three of its locals upheld); *Motor Carriers Council, Inc.* v. *Teamsters, Local 600*, 516 F.2d 316 (8th Cir. 1975) (per curiam) (award of "damages in excess of $5 million" against union upheld); *Pilot Freight Carriers, Inc.* v. *Teamsters*, 495 F. Supp. 619 (M.D.N.C. 1980), *appeal pending* (4th Cir. No. 80-1547) ($3,030,625 damage award against union); *California Trucking Assn.* v. *Teamsters, Local 70*, 94 LRRM 2981 (N.D. Cal. 1977), *appeal pending* (9th Cir. No. 77-3445) ($3,080,048 damage award against union); *Roadway Express* v. *Highway Truck Drivers*, 299 F. Supp. 1058 (E.D. Pa. 1969) ($980,000 damage award against union).

project is utterly distorted and a broad no-strike clause is a valuable bargain—a strong deterrent against work stoppages during the life of a collective agreement—whether or not the additional remedy of an injunction is available to the employer.

Finally, petitioners' brief is conspicuously deficient in showing that the reasoning of *Buffalo Forge* is faulty, concentrating instead almost exclusively on conflicts stated to have developed among the lower courts in situations far removed from this one. Pet. Br. at 34-35, 37-38. It is questionable whether conflict among the lower courts *ever* justifies reconsideration of a recently decided case; the expected and highly effective response is for this Court in the exercise of its *certiorari* jurisdiction to resolve any square conflicts while further elucidating for the guidance of the lower courts the principles which are to govern decision. But reconsideration of a settled rule of law is particularly inappropriate here where the nature of the asserted conflicts is such that they are no more likely to be solved by reversing a precedent than they were resolved by the original decision. Conflicts in damages cases involving interpretation of no-strike clauses on their merits (Pet. Br. 34-35) as well as conflicts in situations where the arbitrability of a particular dispute is in question (Pet. Br. 37-38) would inevitably arise even if *Buffalo Forge* were overruled; no-strike clauses would still have to be construed by the courts if the parties failed to agree to interpretation by an arbitrator, and arbitration clauses and implied no-strike clauses would also have to be interpreted in cases seeking specific performance of either type of provision.

The solitary point on which petitioners' brief challenges the reasoning of the majority in *Buffalo Forge* involves the Court's treatment of the proposition that a no-strike promise in a collective bargaining agreement is the *quid pro quo* for the employer's promise to bargain.

Pet. Br. 36-37. Petitioner attributes lower court conflicts over the scope of contractual no-strike clauses to flaws in the *Buffalo Forge* articulation of the *quid pro quo* theory, but its argument distorts this portion of the *Buffalo Forge* opinion. *Buffalo Forge* did not originate the *quid pro quo* theory, nor did it assert that theory as an independently valid premise for denying an injunction unless the strike is over an arbitrable grievance. The majority's discussion on this point (428 U.S. at 407 quoted pp. 4-5 *supra*) is simply part of an entirely accurate description of the reasoning of *Boys Markets* and in no way suggests that no-strike clauses and arbitration clauses are in all instances to be given coterminous application. That is hardly surprising since the analytic distinction between the scope of the no-strike promise and the scope of the arbitration promise was spelled out by the Court in *Lucas Flour*, 369 U.S. at 106 (quoted, p. 9 *supra*) and in *Gateway Coal Co.*, 414 U.S. 368, 382. The contracting parties are free to agree to an arbitration clause that is broader or narrower than the no-strike promise, and there is nothing to even remotely suggest that the Court was unaware of that basic tenet of the national labor policy in deciding *Buffalo Forge*. Alleged misapplications of the *quid pro quo* theory by lower courts thus provide no basis for suspending *stare decisis* principles.

In the end, then, petitioners' brief stands for no more than that there should be a greater opportunity for employers to obtain strike injunctions whether or not arbitration is in the picture. See Pet. Br. at 36-37, 39-40, 43. The petitioners' real disagreement is not with the accommodation struck in *Boys Markets* and *Buffalo Forge* but with Congress' decision not to make § 4 of Norris-LaGuardia entirely inapplicable to suits brought under § 301. To accept petitioners' argument would be to violate the fundamental requirement of judicial deference to the legislative prerogative to establish the national labor policy.

CONCLUSION

For the reasons stated above, and in the respondents' brief, the judgment below should be affirmed.

Respectfully submitted,

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